

██████████,

APPELLANT

v.

MARYLAND DEPARTMENT OF

HEALTH

* BEFORE SUSAN A. SINROD,

* AN ADMINISTRATIVE LAW JUDGE

* OF THE MARYLAND OFFICE

* OF ADMINISTRATIVE HEARINGS

* OAH No.: MDH-MCP-12E-23-02068

* * * * *

AMENDED DECISION¹

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STATEMENT OF THE CASE

The Appellant was receiving ten personal assistance services (PAS) hours under the Community First Choice Program (CFC). On January 15, 2023, the Maryland Department of Health (Department), Division of Evaluation and Service Review, notified the Appellant through his mother, that the Department was denying the Appellant’s Annual Redetermination Plan of Service for the ten PAS hours (denial letter). The Appellant requested a hearing on January 9, 2023. Code of Maryland Regulations (COMAR) 10.01.04.02A(1).

On March 9, 2023, I conducted a remote hearing via Webex. COMAR 10.01.04.06; COMAR 28.02.01.20B(1)(b). ██████████, Esquire,² represented the Appellant, who was not present. ██████████, Assistant Attorney General, represented the Department.

¹ This Amended Decision is for the purpose of correcting a clerical error in Finding of Fact #4, upon the Appellant’s request. The remainder of the decision is the same as originally issued.

² Mr. ██████████ is also the Appellant’s father. The Appellant’s mother, ██████████, was also present.

The contested case provisions of the Administrative Procedure Act, the procedures for Fair Hearing Appeals under the Maryland State Medical Assistance Program, and the Rules of Procedure of the Office of Administrative Hearings (OAH) govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021); COMAR 10.01.04; COMAR 28.02.01.

ISSUE

Did the Department properly deny the Appellant's request for ten PAS hours under the CFC?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits into evidence on behalf of the Department:³

- No Exhibit number Hearing Summary, received February 22, 2023
- Dept. Ex. #1- interRai Home Care MD Assessment Form (interRai), dated [REDACTED] 2022
- Dept. Ex. #2- Person-Centered Plan, effective July 1, 2022
- Dept. Ex. #3- Behavioral Support Services Behavior Plan, dated December 9, 2021

I admitted the following exhibits into evidence on behalf of the Appellant:

- App. Ex. #1 - Denial letter, dated January 15, 2023
- App. Ex. #2- Plan of Care, dated August 2, 2016; Plan of Care, dated August 4, 2021; Plan of Care, dated August 11, 2022

³ The Department submitted several other exhibits which were never identified or admitted into evidence. Since those exhibits were not marked or identified, I have retained them separately in the OAH file.

Testimony

The Department presented the testimony of the following witnesses:

1. [REDACTED], Nursing Program Consultant, accepted as an expert witness in nursing and utilization review;
2. [REDACTED], LCSW-C, Clinical Consultant, MDH, accepted as an expert witness in social work and utilization review.

The Appellant presented the testimony of [REDACTED], the Appellant's mother.

FINDINGS OF FACT

Based on the evidence presented, I find the following facts by a preponderance of the evidence:

1. At all times relevant to this proceeding, the Appellant was twenty-two years old.
2. The Appellant has been diagnosed with Down syndrome, autism, attention deficit hyperactivity disorder, disruptive behavior disorder, obsessive compulsive disorder, anxiety, migraines, and hyperthyroidism.
3. The Appellant needs assistance with his activities of daily living (ADLs) and instrumental activities of daily living (IADLs) and is technically eligible for PAS under the CFC.
4. The Appellant has historically exhibited behavioral problems. He has been frequently physically abusive and destructive of property. He often becomes noncompliant by refusing to complete a task, exhibited by lying on the floor and refusing to move. He is known to hit walls and has padded walls at home to keep him from injuring himself. These behaviors happen more frequently if he is out in the community or on an outing, but they occur at home as well.

5. From December 2015 until May 2016, the Appellant received inpatient services from the neurobehavioral unit at the [REDACTED] ([REDACTED]).

6. Following his discharge from [REDACTED], the Appellant's incidents of physical aggression decreased but they still occur.

7. The Appellant has been receiving PAS services under the CFC since 2016. His PAS caregiver, [REDACTED],⁴ has been working with the Appellant for six years and he and the Appellant have a close relationship. [REDACTED] knows how to handle the Appellant's behavioral issues.

8. Caregivers under the CFC are trained in CPR and first aid. They are not trained to handle physical aggression or other behavior problems that could be harmful to the Appellant or those around him.

9. In July 2021, the Appellant began to receive services through the Community Pathways Waiver (Pathways), administered by the Developmental Disabilities Administration (DDA). The services that he needs and receives are set forth in a Person-Centered Plan.

10. Included in the many services the Appellant receives through Pathways are 63.5 hours per week of personal supports enhanced, which includes assistance with ADLs and IADLs.

11. In 2021, due to the COVID-19 pandemic, the Department did not conduct its annual review for the Appellant's participation in the CFC. Therefore, the Department was unaware of the Appellant's participation in Pathways, and of the contents of his Person-Centered Plan, until October 2022 during the most recent annual review. The Department only became aware of the severity of the Appellant's behavioral difficulties through the Person-Centered Plan.

⁴ The Appellant's mother explained that [REDACTED] has a long last name that she did not know how to pronounce. Therefore, I will refer to him as [REDACTED] throughout this decision.

DISCUSSION

LEGAL FRAMEWORK

The CFC is designed to provide certain home and community-based services and supports as an alternative to the institutional placement of an individual who has been determined to require an institutional level of care. 42 C.F.R. § 441.500(b) (2022); COMAR 10.09.84.01. Under the CFC, PAS may be provided to eligible individuals, and are defined as follows:

- (a) “Personal assistance services” means assistance specific to the functional needs of a participant with a chronic illness, medical condition, or disability.
- (b) “Personal assistance services” includes:
 - (i) Assistance with activities of daily living [ADLs] and instrumental activities of daily living [IADLs]; and
 - (ii) The performance of delegated nursing function.

COMAR 10.09.84.02B(23).

“Assistance” means that another individual:

- (a) Physically performs the activity for the participant;
- (b) Physically helps the participant to perform the activity;
- (c) Monitors the participant’s performance of the activity in order to ensure health and safety; or
- (d) Cues or encourages the participant to perform the activity.

COMAR 10.09.84.02B(3).

ADLs are defined as tasks or activities that include, but are not limited to:

- (a) Bathing and completing personal hygiene routines;
- (b) Dressing and changing clothes;
- (c) Eating;
- (d) Mobility, including:
 - (i) Transferring from a bed, chair, or other structure;
 - (ii) Moving, turning, and positioning the body while in bed or in a wheelchair; and
 - (iii) Moving about indoors or outdoors; and
- (e) Toileting, including:
 - (i) Bladder and bowel requirements;

- (ii) Routines associated with the achievement or maintenance of continence;
- and
- (iii) Incontinence care.

COMAR 10.09.84.02B(1).

IADLs are defined as tasks or activities that include, but are not limited to:

- (a) Preparing meals;
- (b) Performing light chores that are incidental to the personal assistance services provided to the participant;
- (c) Shopping for groceries;
- (d) Nutritional planning;
- (e) Traveling as needed;
- (f) Managing finances and handling money;
- (g) Using the telephone or other appropriate means of communication;
- (h) Reading; and
- (i) Planning and making decisions.

COMAR 10.09.84.02B(15).

PAS are administered in a manner that is consistent with the recipient's Plan of Service, which is defined as follows:

"Plan of service" means the written support plan that:

- (a) Reflects what is important to the individual and what is important for his or her welfare; and
- (b) Is developed with support from the supports planner with input from the individual and, when applicable, the individual's representative.

COMAR 10.09.84.02B(24).

PAS are covered under the CFC, as follows:

A. The Program covers personal assistance services that are approved in the plan of service and rendered to a participant by a qualified provider in the participant's home or a community setting.

B. The Program covers the following services when provided by a personal assistance provider:

- (1) Assistance with activities of daily living;
- (2) Delegated nursing functions if this assistance is:
 - (a) Specified in the participant's plan of service; and
 - (b) Rendered in accordance with the Maryland Nurse Practice Act, COMAR 10.27.11, and other requirements of the Maryland Board of Nursing;

(3) Assistance with tasks requiring judgment to protect a participant from harm or neglect;

(4) Assistance with or completion of instrumental activities of daily living, provided in conjunction with the services covered under §B(1)—(3) of this regulation; and

(5) Assistance with the participant’s self-administration of medications, or administration of medications or other remedies, when ordered by a physician.

C. Personal assistance services may not include:

(1) Services rendered to anyone other than the participant or primarily for the benefit of anyone other than the participant;

(2) The cost of food or meals prepared in or delivered to the home or otherwise received in the community; or

(3) Housekeeping services, other than those incidental to services covered under §B of this regulation.

COMAR 10.09.84.14.

For an individual to be eligible for the CFC, he or she must “need the level of care provided in a hospital, nursing facility, an intermediate care facility for individuals with intellectual disabilities, an institution providing psychiatric services for individuals younger than 21 years old, or an institution for mental diseases for individuals 65 years old or older.”

COMAR 10.09.84.04A(1); *see also* 42 U.S.C.A. § 1396n(k)(1) (Supp. 2022).

The services provided to applicants or recipients must be “medically necessary,” meaning that the services are:

(a) Directly related to diagnostic, preventive, curative, ameliorative, palliative, or rehabilitative treatment of an illness, injury, disability, or health condition;

(b) Consistent with current accepted standards of good medical practice;

(c) The most cost efficient service that can be provided without sacrificing effectiveness or access to care; and

(d) Not primarily for the convenience of the participant, the participant’s family, the provider, or the worker.

COMAR 10.09.84.02B(17).

Pathways is one of several Medicaid waiver programs jointly funded by Maryland and the federal government. *See generally* 42 U.S.C.A. § 1396a (Supp. 2022); 42 C.F.R. § 430.0 (2022). Pathways is implemented as a Home and Community-Based Services (HCBS) Waiver; the federal waiver program is authorized in §1915(c) of the Social Security Act. The program

permits a state to furnish an array of home and community-based services that assist Medicaid beneficiaries to live in the community and avoid institutionalization. The stated purpose of the Medicaid HCBS Waiver Program is to “complement and/or supplement the services that are available to participants through the Medicaid State plan and other federal, state and local public programs as well as the supports that families and communities provide.”⁵

Each individual who is eligible for DDA services has an Individual Plan (IP). COMAR 10.22.01.01B(28); *see generally* COMAR 10.22.05. The IP lists services to be provided to the individual which include, but are not limited to, habilitation, medical, and social. COMAR 10.22.05.02B(3). The IP is developed through a collaborative process by a team which includes “the individual, proponent, licensee representatives, resource coordinator, and others.” COMAR 10.22.01.01B(58). An IP must be reviewed annually and may be reviewed more often as needed or modified as required by the individual’s circumstances. COMAR 10.22.05.05.

The Appellant has a DDA Person-Centered Plan, which is defined as follows:

(24) Person-Centered Plan.

(a) “Person-centered plan” means a written plan that is developed through a planning process driven by the participant with a developmental disability to:

- (i) Identify the participant’s goals and preferences;
- (ii) Identify services to support the participant in pursuing the participant’s personally defined outcomes in the most integrated community setting;
- (iii) Direct the delivery of services that reflect the participant’s personal preferences and choice; and
- (iv) Identify the participant’s specific needs that must be addressed to ensure the participant’s health and welfare.

(b) “Person-centered plan” includes an individual plan as referenced in COMAR 10.22.

COMAR 10.09.48.01B(24).

When not otherwise provided by statute or regulation, the burden of proof in a hearing before the OAH is by a preponderance of the evidence, and rests with the party making an

⁵ <https://dda.health.maryland.gov/Documents/2019%20December%20Waiver%20Amendment%20Docs/CSW%20application.pdf>.

assertion or a claim. Md. Code Ann., State Gov't § 10-217 (2014); *Comm'r of Labor and Indus. v. Bethlehem Steel Corp.*, 344 Md. 17, 34 (1996). To prove an assertion or a claim by a preponderance of the evidence means to show that it is “more likely so than not so” when all of the evidence is considered. *Coleman v. Anne Arundel Cnty. Police Dep't*, 369 Md. 108, 125 n.16 (2002). The parties agreed that the Department bears the burden of proof.⁶

THE EVIDENCE

██████████ Nursing Program Consultant with the Department, was accepted as an expert witness in nursing and utilization review. She explained that the Department denied the Appellant's request to continue his ten PAS hours per week because the DDA is providing the same services through Pathways. Given the Appellant's need for assistance with his ADLs and IADLs, he qualifies for PAS. However, the DDA's Person-Centered Plan, which lists all the supports the Appellant receives from the DDA, established that the Appellant already receives 63.5 “personal supports enhanced,” which, according to Ms. ██████████, includes assistance with ADLs and IADLs. Dept. Ex. #2. Additionally, CFC staff are not trained in the management of difficult behavioral needs; their only specialized training is in CPR and first aid. Because of the Appellant's behavioral needs, he requires assistance from people who are trained in behavioral techniques, which is far beyond the skill level of the providers of CFC PAS hours.

According to Ms. ██████████, the DDA has created a plan designed to meet all the Appellant's needs, including assistance with ADLs and IADLs and management of behavioral concerns. Ms. ██████████ conceded that the regulation cited in the denial letter (COMAR 10.09.84.23) does not contain any limitations applicable to the Appellant. However, she noted that the Department also

⁶Since this decision was made during the annual review process, the Appellant, as applicant and the party asserting the claim for ten PAS hours, more appropriately bears the burden of proof. However, I asked the parties at the beginning of the hearing who they each believed bore the burden of proof, and they both agreed the burden was on the Department. By agreement of the parties, I will place the burden on the Department.

denied the Appellant because the requested services would be duplicative of the services he receives through Pathways, and because the Appellant requires behavioral support services beyond those which the CFC can provide.

██████████, LCSW-C, Clinical Consultant for the Department, was accepted as an expert witness in social work and utilization review. He similarly testified that the Department denied the Appellant's ten PAS hours because the services would duplicate the services provided by the DDA, and because the Appellant's behavioral needs are outside the scope of the PAS. Mr. ██████████ went through the DDA Person-Centered Plan and noted that all the services that the CFC could provide through PAS hours were already encompassed in the Appellant's DDA plan. Dept. Ex. #2. Mr. ██████████ also noted that the DDA plan requires providers who are trained in behavioral management techniques to address the Appellant's behavioral needs.

Mr. ██████████ explained further that the Department did not know the severity of the Appellant's behaviors when it previously approved him for PAS. The Department saw the Person-Centered plan for the first time during the most recent annual review in October 2022, since it did not conduct its annual review in 2021 due to COVID. According to Mr. ██████████, had the Department known this information back in 2016 when it first approved the Appellant, the Department would have denied him for PAS back then. Although the Department knew the Appellant had some behavior issues, it did not know the extent until it saw the Person-Centered Plan and the Behavior Plan, which resulted from a Behavior Assessment conducted by Behavioral Support Services in October 2021. Dept. Ex. #3. Mr. ██████████ had not previously been involved in the annual review process for the Appellant; the matter was referred to him during this current review because he is a behavioral consultant. Mr. ██████████ conceded that there are times when individuals receive services through both the CFC and Pathways, but in

those cases, the DDA services do not include assistance with ADLs and IADLs, which is what the CFC provides.

The Appellant's mother testified that the Appellant's behaviors improved significantly after he was discharged from ██████████ in 2016. The nurse who performed the most recent interRai assessment was very familiar with the Appellant's behaviors and the DDA plan. That nurse assured the Appellant's mother that the Appellant's level of care was the same as in previous years. According to the Appellant's mother, the nurse could not understand, therefore, why the Department denied the Appellant now. The Appellant's mother maintained that no one has had to use restraints or special techniques to control the Appellant's behavior. ██████████ has been the Appellant's PAS caregiver for more than six years, and ██████████ and the Appellant have a very strong relationship. ██████████ even decided to turn down another job because it would have required that he stop working with the Appellant. The Appellant's mother suspected that the Department denied the Appellant because she had recently contacted a ██████████ related to another matter about a stair lift repair.

ARGUMENTS OF THE PARTIES

The Department argued that the Appellant's needs exceed the care that could be provided by the untrained home health aides that fulfill PAS under the CFC. Their training is in CPR and first aid. They are trained to assist with ADLs and IADLs but not in the management of behavioral issues. The Department was previously unaware of the DDA services the Appellant was receiving, and of the severity of his behavioral issues, because during the COVID-19 pandemic, the Department did not conduct annual reviews. The last time the Department reviewed the Appellant's case was in 2021. Further, the Department argued that now, the Appellant has a Person-Centered Plan that provides him with a large array of services, and

includes 63.5 hours of personal supports enhanced, which includes assistance with ADLs and IADLs. Therefore, CFC services are duplicative. The Department maintained that the Appellant's needs cannot be met through the CFC.

The Appellant argued that the duplication of services is not a valid basis for denial. There are plenty of recipients that receive services both through the CFC and DDA. The Appellant disputed the denial letter itself, which cited COMAR 10.89.04.23, a regulation inapplicable to the Appellant; it does not address anything about the provision of services to an individual with a behavior plan or who receives DDA services. Further, [REDACTED], who is the Appellant's PAS caregiver, has been with the Appellant for six years and has encountered no problem with the Appellant. The Appellant argued that his behavioral needs have not changed, and he has been receiving services under the CFC since 2016. Therefore, neither the facts of the case nor the applicable regulations support the Department's denial.

ANALYSIS

The Denial Letter

The Department is required to send proper notice when program eligibility is denied. COMAR 10.01.04.03B(1)(b). The notice shall contain, among other items, the reasons for the intended action and the regulations that support the action. COMAR 10.01.04.03B(3) & (4).

One of the reasons for the denial that the Department cited in its denial letter stated: "Services you requested are restricted under program limitations (COMAR 10.09.84.23)." App. Ex. #1. The subsequent checked box expounded further on this reason, "Specifically, current services you receive under the Community Pathways Waiver support your activities of daily living (ADL) and instrumental activities of daily living (IADL) needs." The Appellant was correct. COMAR 10.09.84.23B lists eight services the CFC will not cover, none of which apply

to the Appellant. Nothing in that regulation relates to other services an applicant or recipient receives. The Department did not dispute this inaccuracy. I agree that a denial based on COMAR 10.09.84.23 has no legal basis as applied to the facts of this case.

However, the checked boxes that set forth the second and third reasons for the denial state:

The medical evaluation and documents you provided indicate that you require a higher level of care; specifically, a level of care greater than that which can be provided by an unlicensed provider (i.e., Certified Nursing Assistant (CNA) and/or Certified Medical Technician (CMT).

Additionally, the documentation you provided supports the need for an increased level of behavioral intervention and supervision necessary to keep an individual safe, which is beyond the scope of CFC PAS. PAS through the CFC program must be consistent with current accepted standards of medical practice and the most cost-effective service without sacrificing effectiveness or access to care, which is not the case for participants with behavioral needs requiring additional interventions (COMAR 10.09.84.02).

These two denial reasons are interrelated and certainly provide a valid reason for denial, if proven. By definition, PAS under the CFC are for the purpose of only providing assistance with ADLs and IADLS, or delegated nursing function. COMAR 10.09.84.02B(23)(b). Therefore, if the Department establishes that the PAS provider will be required to perform tasks outside of that scope, denial would be appropriate. Therefore, the remainder of the denial letter was sufficient to place the Appellant on notice of the reasons for the denial and constituted sufficient notice of agency action.

Scope of the CFC

The most recent interRAI⁷ assessment is dated [REDACTED] 2022. Dept. Ex. #1. It has multiple references to behavioral concerns. The initial narrative states:

⁷ The interRai is the assessment tool used by the Department to determine eligibility for the CFC. The assessment is conducted by a nurse from the local health department and ultimately provided to the Department.

Client has multiple behavioral concerns and was frequently physical (sic) abusive but this has decreased in frequency. Client was hospitalized in the past for behavioral concerns and pain management post op. Client was admitted to [REDACTED] neurobehavioral unit for an extended amount of time. Client was very aggressive and noncompliant prior to this admission. He was admitted from December 2015 until mid-May 2016. His compliance and behaviors have improved but still persist. . . . Client continues to hit walls. Padding in his wall installed thru Autism waiver. Continues to bang but padding helps.

Dept. Ex. #1, p.2.

In Section E entitled “Mood and Behavior,” the assessor noted that the Appellant showed signs of persistent anger with self or other on one to two days of the last three days. App. Ex. #2, p. 4. In a narrative, the assessor said she reviewed the information with the Appellant’s mother, who reported that there had been no major concerns or changes with the Appellant. App. Ex. #3, p. 5. It states further:

Client continues to hit walls in his bedroom. The padding installed thru Autism waiver helps and prevents injury. Client will grab towel racks and toilet paper holder when mad. Mother reports current behaviors include mainly noncompliance. Per mother, client will refuse to move and lay on the floor. Parents cannot move him. Aggression is decreased in frequency.⁸

Dept. Ex. #1, p. 5.

The Department was aware of this information, as it was contained in the Department’s Plans of Care for the Appellant in 2016, 2021 and 2022. App. Ex. #2. However, until recently, the Department was not aware of the Appellant’s Person-Centered Plan through the DDA, which sets forth in detail the Appellant’s needs and the services provided through Pathways to address those needs. Dept. Ex. #2. In the section entitled “Risks,” the Person-Centered Plan notes that the Appellant needs 2:1 staffing in times of emotional excitement, mostly when out of the house, doctors’ appointments and during exciting events like going to [REDACTED] Dept. Ex. #2, p. 5-6. The Person-Centered Plan refers to the Behavior Plan, which discusses the Appellant’s

⁸The narrative went on to quote the Appellant’s mother’s report from a June 2020 assessment; however, I conclude that information is not relevant to the Appellant’s current status.

extensive disruptive behaviors and requires staff trained in the use of [REDACTED] techniques, which are different types of person-to-person physical restraints. Dept. Ex. #3. The Behavior Plan was created in October 2021 and is extensive regarding the Appellant's behaviors and how to manage them.

In the Person-Centered Plan where it discusses the supports the Appellant needs, it states, as if the Appellant is speaking in the first person: "My behaviors have escalated to unpredictable outbursts and have placed at risk my safety and the safety of those around me." Dept. Ex. #2, p. 21. The record is clear that a significant part of the Appellant's care centers around managing behavioral concerns.

The Appellant provided the three Plans of Care, which the Department generated on August 2, 2016, August 4, 2021, and August 11, 2022. App. Ex. #2. They contain the Department's assessment findings and rationale regarding the Appellant, as well as recommendations for needed services. All three mention the Appellant's behavioral concerns, the wording of which is mostly unchanged between the three different documents. Both the 2021 and 2022 Plans of Care note that the frequency of physically abusive behavior decreased after the Appellant's stay at [REDACTED].

I found the Appellant's mother's testimony to be credible that the Appellant's behaviors have gotten progressively better. No one has had to use any type of restraint and none of his DDA providers are [REDACTED] trained. [REDACTED] has been providing PAS services to the Appellant for more than six years, with only minor behavior problems that [REDACTED] was able to handle.

I also found Ms. [REDACTED]'s and Mr. [REDACTED]'s testimony to be credible and informative, and both shed light on the reasons for the denial. They both testified that when the Department completed the August 4, 2021 Plan of Care, the DDA services were not yet in place. Mr.

██████ expounded that the Department did not have knowledge of the severity of the Appellant's behavioral issues until the 2022 annual review. If it had, the Department would have concluded that the Appellant's needs were outside the scope of the CFC. Due to the delay in annual reviews due to COVID, the Department did not see the DDA plan, initially created in July 2021, until October 2022.

As a result, the denial did not happen until January 15, 2023, after the most recent annual review. Although the Appellant's behaviors decreased significantly since his time at ██████ ██████, managing those behaviors is still a prominent part of his daily care as set forth in the most recent interRai assessment and the DDA Person-Centered Plan.

The Appellant has been fortunate to have ██████ as his PAS caregiver; that relationship has been beneficial for the Appellant, and ██████ knows how to handle the Appellant's behavioral episodes. However, the Department cannot ignore the documentation that comprised the utilization review. The utilization review is conducted through documentation only, and the documentation patently sets forth that there are regular occurrences of physical and verbal aggressive behaviors. PAS providers are trained in CPR and first aid, but not how to manage physical behavior concerns. It would be ideal if the Department could approve the Appellant for PAS hours knowing that ██████, the PAS caregiver, could address all of those needs. That cannot be possible however, because services under the CFC are limited in scope to ADLs and IADLs, performed by caregivers without specific behavioral management training. COMAR 10.09.84.02B(23)(b). If the Department approved the PAS, there could come a time when ██████ no longer works with the Appellant. Then another caregiver, untrained in behavior management, would be required to fulfill those hours. Based on the documentation available to the Department at the time of the review, this would be an issue of safety which the typical PAS

providers would not know how to manage. The Department rendered the denial based on ample, consistent documentation, and properly concluded that the Appellant's needs fall outside the scope of the CFC.

Duplicated Services

As stated above, the first denial reason, for services not supported by documents or restricted under COMAR 10.09.84.23, had no applicability to the receipt of duplicate services and was not worded in a manner that was sufficient to adequately place the Appellant on notice of that issue. Regardless, it is important to note that services under the CFC must be medically necessary. There is no dispute that through Pathways, the Appellant is receiving 63.5 hours of personal supports enhanced, which includes assistance with ADLs and IADLs. As such, had I determined that the denial notice was proper on this issue, I would have concluded that because the DDA's comprehensive plan includes the same assistance as that which could be provided under the CFC, those services would not be medically necessary because that assistance is already being provided.

SUMMARY

Based on my analysis herein, I conclude that the Department properly determined that the Appellant's needs are beyond the scope of the CFC, and it properly denied his Annual Redetermination Plan of Service for ten PAS hours.

CONCLUSION OF LAW

Based on the Findings and Discussion above, I conclude that the Department properly denied the Appellant's request for ten PAS hours, because his needs are beyond the scope of that which can be provided under the CFC. COMAR 10.09.84.02B(1), (15), & (23); COMAR 10.09.84.14.

ORDER

I **ORDER** that the decision of the Maryland Department of Health is **AFFIRMED**.

Signature Appears on Original
[Redacted]

May 3, 2023
Date Decision Issued

Susan A. Sinrod
Administrative Law Judge

SAS/cj
#204874

REVIEW RIGHTS

This is the final decision of the Maryland Department of Health. A party aggrieved by this final decision may file a written petition for judicial review with the Circuit Court for Baltimore City, if any party resides in Baltimore City or has a principal place of business there, or with the circuit court for the county where any party resides or has a principal place of business. Md. Code Ann., State Gov't § 10-222(c) (2021). The original petition must be filed in the circuit court within thirty (30) days of the date of this decision, with a copy to [Redacted], Office of the Attorney General, Suite 302, 300 W. Preston St., Baltimore, MD 21201. Md. Rules 7-201 through 7-210. The petition for judicial review should identify the Maryland Department of Health, which administers the Medicaid program, as the agency that made the decision for which judicial review is sought. The address of the Maryland Department of Health should be included on the petition: 201 W. Preston St., Room 545A-2, Baltimore, MD 21201, Attn: [Redacted]. A separate petition may be filed with the court to waive filing fees and costs on the ground of indigence. Md. Rule 1-325. No fees may be charged to Medical Assistance Program recipients, applicants, or authorized representatives for transcription costs or for preparation or delivery of the record to the circuit court. The Office of Administrative Hearings is not a party to the judicial review process.

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██████████,

APPELLANT

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MARYLAND DEPARTMENT OF

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* BEFORE SUSAN A. SINROD,

* AN ADMINISTRATIVE LAW JUDGE

* OF THE MARYLAND OFFICE

* OF ADMINISTRATIVE HEARINGS

* OAH No.: MDH-MCP-12E-23-02068

* * * * *

FILE EXHIBIT LIST

I admitted the following exhibits into evidence on behalf of the Department:

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I admitted the following exhibits into evidence on behalf of the Appellant:

App. Ex. #1 - Denial letter, dated January 15, 2023

App. Ex. #2- Plan of Care, dated August 2, 2016; Plan of Care, dated August 4, 2021;
Plan of Care, dated August 11, 2022